

Supreme Court, U.S.

FILED

DEC 19 1990

JOSEPH F. SPANOL, JR.
CLERK

(2)

In The
SUPREME COURT OF THE UNITED STATES

Term, 1990
No. 90-809

GEORGE BERNESSEER,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent

SUPPLEMENTAL BRIEF IN SUPPORT OF
PETITION FOR WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

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ARGUMENT

**THIS CASE SHOULD BE CONSOLIDATED
FOR HEARING WITH THE CASE OF
MICHIGAN V. LUCAS, IN WHICH
CERTIORARI WAS RECENTLY GRANTED
BY THIS COURT**

This is a petition for certiorari to the United States Court of Appeals for the Second Circuit. The petition was docketed in this Court on November 13, 1990. On November 27, 1990, the Solicitor General of the United States filed a waiver of the Government's right to file a response to the petition in this case.

The underlying issue in this case is whether the petitioner's sixth amendment rights were violated by the District Court's refusal to admit evidence of Mr. Bernesser's



medical condition, and the medication he was taking, at the trial of the matter. The reason given by the District Court for refusal to admit the evidence was Mr. Bernesser's failure to comply with the notice provisions of Rule 12.2(b) of the Federal Rules of Criminal Procedure. It was and is Mr. Bernesser's contention that the District Court's slavish adherence to this Rule violated both Mr. Bernesser's rights under the Sixth Amendment to the United States Constitution, and this Court's prior ruling in *Taylor v. Illinois*, 484 U.S. 400 (1988).

After the filing of the petition herein, this Court granted



certiorari in the case of *Michigan v. Lucas*, ____ U.S. ____ (1990). That case involved a Michigan statute which required the defendant to give notice in advance of trial if evidence of defendant's prior sexual conduct with the complainant would be offered. The Michigan Supreme Court found this statute to be violative of the defendant's Sixth Amendment right to confrontation.

Thus, the issues raised by Mr. Bernesser appear to be similar to those already before the Court in the case of *Michigan v. Lucas*, *supra*. Petitioner herein requests that the Court grant the instant petition for certiorari, and that



this case be consolidated for argument with *Michigan v. Lucas, supra.*

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be granted.

Respectfully submitted,

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December 13, 1990